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Exempt from fees per Gov't code 6103
To the benefit of the City of San Diego

7 Attorneys for Plaintiff, City of San Diego
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9 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

10 **CENTRAL DIVISON**

| | | |
|--|---|------------------------------------|
| 11 CITY OF SAN DIEGO, a Municipal Corporation, |) | Case No. |
| |) | |
| 12 Plaintiff, |) | COMPLAINT FOR DAMAGES |
| |) | <i>Unlimited jurisdiction case</i> |
| 13 v. |) | |
| |) | I/C Judge: |
| 14 PAUL HUBKA, and DOES 1 to 10, inclusive, |) | Dept.: |
| |) | Complaint filed: |
| 15 Defendant. |) | Trial: Not Set |

16
17 Comes now plaintiff CITY OF SAN DIEGO [CITY] and files this complaint against
18 defendant PAUL HUBKA [Hubka], and DOE defendants 1 thru 10, inclusive, alleging as
19 follows:
20

21 **GENERAL ALLEGATIONS**

22 1. CITY asserts that jurisdiction and venue are proper before this Court as the events
23 which underlie this complaint occurred within the County of San Diego.

24 2. CITY is a California Charter City duly organized and existing by virtue of the
25 laws of the State of California.

26 3. On information and belief, this is a matter of unlimited jurisdiction insofar as it
27 involves a claim for money damages exceeding \$25,000.

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4. CITY is informed and believes, and thereon alleges, that Hubka is, and at all times mentioned herein was, an individual residing in Alpine in the County of San Diego and State of California.

5. The true names and capacities, whether individual, corporate or otherwise, of defendants named herein as DOES 1 through 10, inclusive, are unknown to CITY, which is informed and believes, and thereon alleges, that each of said fictitiously named defendants is liable to CITY in some manner in the causes of action herein alleged, and, therefore, CITY sues such defendants by said fictitious names. CITY will move to amend this complaint when the true names and capacities of said fictitiously named defendants have been ascertained.

6. CITY is informed and believes, and on thereon alleges, that at all times herein mentioned each defendant herein was the agent and/or employee of each of the other defendants named herein, and in doing any of the things herein alleged, was acting within the scope of his/her/its authority of such agency and/or employment and with the permission and consent of said other defendants.

7. CITY is informed and believes, and thereon alleges, that each of the defendants designated herein as a DOE, and hereby referred to, proximately and negligently caused the damages hereinafter alleged.

FIRST CAUSE OF ACTION

(Negligence)

8. CITY refers to and incorporates herein by this reference, as though set forth in full, each and every allegation contained in paragraphs 1 through 7, above.

9. At all times relevant herein CITY employed Hubka as a police officer with the San Diego Police Department [SDPD], assigned at all such times to that Department's canine unit [SDPD canine unit].

10. As an officer in the SDPD canine unit, Hubka was assigned, as handler, the care, custody and control of Forrest, a Belgian Malinois dog trained as a police dog [Forrest].

11. At all times relevant herein Forrest was the property of CITY.

1 12. SDPD canine unit policy requires, among other things, that canine unit officers
2 such as Hubka take their dogs home with them when off duty to allow for bonding between the
3 officer and the dog and to allow for ongoing training, and officers such as Hubka are expected to
4 provide their dogs with 24-hour care.

5 13. On or about June 20, 2008, Hubka got off duty after working an over-night shift
6 and returned to his home in Alpine, California, with Forrest in the back of his police vehicle.

7 14. On information and belief, Hubka parked his police vehicle in the driveway of his
8 Alpine residence and went into the residence, leaving Forrest in said vehicle with the windows of
9 the vehicle rolled up.

10 15. In the several hours after he returned home Hubka recklessly and/or negligently
11 failed to let Forrest out of his police vehicle or to otherwise check on Forrest's condition.

12 16. Forrest was left unattended in Hubka's police vehicle for an unknown number of
13 hours. During the time Forrest was so unattended the ambient external air temperature outside
14 the police vehicle exceeded 100° Fahrenheit with the interior temperature of the police vehicle at
15 least several degrees hotter.

16 17. As a direct and proximate consequence of these reckless and/or negligent acts or
17 omissions on the part of Hubka Forrest died of heat stroke.

18 18. As a result of the death of Forrest and the loss of his services as an SDPD canine
19 officer the CITY thereby sustained damages in an amount to be proved at trial, including, but not
20 limited to, the cost to replace Forrest and the cost of training a replacement for Forrest.

21 **SECOND CAUSE OF ACTION**

22 (Negligence Per Se)

23 19. CITY incorporates by reference paragraphs 1 through 18, set out above, as though
24 fully set forth hereinbelow.

25 20. California Penal Code § 597.7 reads, in pertinent part, as follows:

26 (a) No person shall leave or confine an animal in any unattended motor
27 vehicle under conditions that endanger the health or well-being of an animal
28 due to heat, cold, lack of adequate ventilation, or lack of food or water, or other
circumstances that could reasonably be expected to cause suffering, disability,
or death to the animal.

1 21. As the party responsible for the care, custody and control of Forrest Hubka had a
2 duty to comply with the provisions of Penal Code § 597.7(a). In reckless and/or negligent
3 disregard of said duty, Hubka left Forrest confined and unattended in his police patrol vehicle
4 under conditions that endangered Forrest's health and well-being in that Forrest was left exposed
5 for a minimum of several hours to extreme heat in excess of 100° Fahrenheit.

6 22. In acting, or failing to act, in a manner consistent with the provisions of Penal
7 Code § 597.7(a) Hubka failed to comply with California state law applicable to the proper care
8 of an animal, all in a manner to be proved at trial, and was therefore negligent *per se*.

9 23. Based on the reckless and/or negligent acts or omissions of Hubka and his failure
10 to comply with the California Penal Code CITY thereby sustained damages in an amount to be
11 proved at trial, including, but not limited to, the cost to replace Forrest and the cost of training a
12 replacement for Forrest.

13 WHEREFORE, CITY prays judgment against defendants, including, but not limited to
14 defendant PAUL HUBKA, as follows:

15 AS TO COUNT I:

16 1. For damages in a sum to be proved at trial.

17 AS TO COUNT II:

18 2. For damages in a sum to be proved at trial.

19 AS TO ALL COUNTS:

20 3. For costs of suit herein, and for such other and further relief as the Court may
21 deem proper.

22 Dated: August 8th, 2008

MICHAEL J. AGUIRRE, City Attorney

23
24 By 

25 Donald McGrath II
26 Executive Assistant City Attorney
27 R. Clayton Welch
28 Deputy City Attorney
Attorneys for Plaintiff
CITY OF SAN DIEGO